IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1233 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SALIM @ CHICHAK ABDUL RAHEMAN SHAIKH - Applicant(s)

Versus

State OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS. BANNA DUTTA FOR MR ANIL S DAVE for Applicant(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 07/10/2005

ORAL JUDGMENT

1. In this petition filed under Articles 226 and 227 of the Constitution of India, petitioner has challenged the order dated 16.3.2004 (Annexure B to the petition) passed by the externing authority i.e., Deputy Commissioner of

Police, Zone III, Ahmedabad City, Ahmedabad by which he has externed the petitioner for a period of two years from five districts i.e., Commissionerate area of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and also the order dated 31.3.2005 (Annexure C to the petition) passed by the appellate authority confirming the said order and prayed to issue a writ, order or directing quashing and setting aside both the above orders.

2. A show cause notice dated 7.8.2003 (Annexure A to the petition) under Section 59 of the Bombay Police Act ('the Act' for short) was issued to the petitioner, wherein, allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him is detrimental for maintenance of public order. Besides this, two offences under the Indian Penal Code are also registered at various police stations of Ahmedabad against him. Therefore by issuing show cause notice the petitioner was

called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner replied to the said show cause notice on 8.12.2003 wherein he has denied all the allegations levelled against him. The externing authority, after considering the reply and other documents on record, passed the impugned order of externment dated 16.3.2004 in exercise of the powers conferred under section 56 (b) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority, which was dismissed by the appellate authority vide order dated 31.3.2005 which has given rise to the present petition.

5. Ms. Banna Dutta, learned advocate for the petitioner, raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, she has also raised

the contention that in show cause notice the activities alleged against the petitioner were of very old and the cases registered against him were of May/June 2002. She does not rest here. She further contended that though the proceedings before the externing authority were concluded on 8.12.2003 including written arguments submitted by the petitioner, the externment order was passed on 16.3.2004, therefore, there is a delay of 8 months in passing the impugned order which is unexplained by the externing authority either in its order or by filing reply affidavit. Therefore, according to the learned advocate for the petitioner, the impugned order of externment suffers from the vices of non-application of mind and is therefore liable to be quashed and set aside.

6. Mr. HM Prachchhak, learned APP for respondent - State of Gujarat does not dispute the factual aspects and urged to pass appropriate order in the light of the settled principles enunciated by this Court.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the order passed by the externing authority as well as the order passed by the appellate authority and other papers

annexed to the petition and the judgments cited at the bar.

8. It is true that the externing authority vide notice dated 7.8.2003 alleged about the antisocial activities carried out by the petitioner which according to the externing authority are detrimental to the maintenance of public order. Pursuant to the show cause notice dated 7.8.2003 the proceedings were initiated, opportunity was given to the petitioner and the proceedings were concluded before the externing authority on 16.3.2004, the day on which the petitioner submitted his written submission. Thereafter the externing authority did not pass order of externment for a period of eight months which ultimately came to be passed on 16.3.2004. Therefore, on the facts and in the circumstances emerging from the record of the case, it can be said that the order of externment came to be passed after delay of eight months. There is no explanation coming forth from the externing authority either in the impugned order or by filing affidavit in reply why there is a delay in passing the order of externment.

9. A similar question arose before a Division Bench of this Court in the case of Santosh Ramprasad Sharma v.

Deputy Commissioner of Police, Crime Branch, Ahmedabad and another, 1992 (2) GLH 457 wherein this court has held that in externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need nor necessity to extern a person from a particular locality or the District. The externment order curtails the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment.

10. A similar view is taken by this Court in the case of Chothmal Sagnsingh Rajput v. State of Gujarat and others, 30 (1) GLR 63.

11. Coming to the facts of the present case, at the cost of repetition, be it stated that there is a delay of 8 months in passing the order of externment by the externing authority, which has remained unexplained. The order dated 16.3.2004 does not give any explanation as to why there is delay in passing the order of externment nor any affidavit in reply is filed to justify the delay

caused in passing the order impugned.

12. Seen in the above context, I am of the opinion that the orders of the externing authority externing the petitioner and that of the appellate authority confirming the order of externment are rendered invalid and illegal and deserve to be quashed and set aside.

13. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures B and C to the petition are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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